

REMARKS

Entry of this amendment for allowance or appeal is requested.

It is proposed to add the feature of claim 14 to applicants' main claim 12. Since claim 14 was not rejected on the prior art, it is believed that, with the indicated amendment of claim 12, all of the claims distinguish patentably over the art of record. Accordingly, reconsideration of the Section 102(b) and Section 103(a) rejections is requested.

As a consequence of the indicated amendment of claim 12, claim 14 is being canceled as redundant. The dependence of claim 15 is also being appropriately amended.

It is noted that claims 15 and 29-31 were also not rejected on the prior art.

The Examiner is requested to reconsider the Section 112, 2nd ¶ rejection of claims 12-31 and the Section 112, 1st ¶ rejection of these claims. In rejecting claims 12-31 under Section 112, 2nd ¶, the Examiner states that the claims are indefinite for failing to "particularly point out and distinctly claim the subject matter which applicant regards as the invention". In support of this position, the Examiner states that it is not seen that "any and all active ingredients are effective in producing the desired improved organoleptic flavor in a product. Only the particular ingredients set forth at page 1, lines 6-7 are seen as the active organic components in the case."

With respect, it is submitted that the applicants' claim language is not indefinite. Nevertheless, in view of the Examiner's comments, it is proposed to add the "nutritionally active" feature of claim 23 to applicants' claim 12. It is respectfully submitted that there is nothing indefinite in the applicants' claim language and those of

ordinary skill in the art will readily understand the metes and bounds of the applicants' invention.

With respect to the applicants' disclosure at page 1, lines 6-7, as referred to by the Examiner, it is respectfully submitted that the examples there given are only representative of nutritionally active materials which can be used in the practice of the invention. This is evident, for example, from the reference to these materials as preferred components in the paragraph bridging pages 1-2 of the applicants' specification.

The applicants' specification refers to this feature of the invention more broadly at page 3, lines 6-10. This portion of the applicants' disclosure is more than adequate to warrant the amended language of claim 12. Accordingly, favorable reconsideration of the Section 112, 2nd ¶ rejection is requested.

For essentially similar reasons, the Examiner is requested to reconsider and withdraw the Section 112, 1st ¶ rejection of the claims as not enabled. The definition of the applicants' active organic solid component as being "nutritionally" active is fully enabled by the applicants' disclosure. The Examiner has given no indication of any such material which would not be enabled by following the applicants' disclosure. Clearly the invention is not limited to the specific materials referred to at page 1, lines 6-7. These are only given as examples illustrative of the invention. They are clearly not taught as critical to the invention but only preferences. This does not mean the invention will only work with these materials.

In brief, the applicants submit that the invention, as claimed, is fully enabled by their disclosure. Accordingly, withdrawal of the Section 112, 1st ¶ rejection is requested.

In connection with the foregoing, it is noted that claim 13 does in fact recite the group of nutritionally active compounds disclosed at page 1, lines 6-7, i.e. the compounds acknowledged by the Examiner to be enabled.

Claim 24 also further defines the nutritionally active component in somewhat more specific fashion than claim 12, as presently amended. This claim is fully enabled for the same reasons as claim 12.

Detailed discussion of the Examiner's several Section 102(b)/103(a) rejections is not thought necessary in view of the proposed amendment of claim 12 to include the limitations of claim 14. However, it is noted that the Examiner's references, no matter how considered, do not anticipate the applicants' invention or make it obvious.

With respect to claims 12, 13 and 23-25, these claims clearly distinguish over Cherukuri alone or even if considered with Perry when there is no reason to consider these references together. The deficiencies of Cherukuri have been previously noted. For one thing, Cherukuri does not disclose the applicants' network as defined by the present claims. Cherukuri's product has a shear form matrix which is not, in any sense, similar to the applicants' network.

The Examiner refers to Cherukuri's Figs. 1 to 3 and states that these figures "clearly show a network of ingredients". With respect, however, it is submitted that Cherukuri does not show anything that would be considered a network by the man skilled in the art. Cherukuri sets out in his text what his products are and he describes (Col. 13, lines 20-63) what is illustrated by Cherukuri's Figs. 1 to 3. Thus, he states that "in Fig. 1

there is no fixed relationship between the particles in the mixture shown in Fig. 1". This means that this product cannot have a network structure.

Further, Cherukuri states that the product according to his Fig. 2 is "a combination of flowable, compactible micro particulates, which are represented as a shearform matrix with the additives fixed therein and thereon". This shows that Cherukuri's shearform matrix is not a network and certainly nothing resembling the applicants' system.

Cherukuri further explains, with respect to Figure 3, that "the micro-particulates are represented under compaction force. The spaces between micro-particulates are reduced or eliminated, but the micro-particulates retain their low density. Added particles retain in and on the surface of the agglomerates". This also means that the Cherukuri particles do not have anything resembling a network structure as the applicants' claims require, particularly since, in the applicants' network, the active components are fully incorporated in the matrix material.

It is appreciated that the amendment to claim 12, to include the feature of claim 14, in and of itself, moots the Examiner's rejection of claims 12, 13 and 23-25 based on Cherukuri, with or without Perry. However, the comments made above are thought to further stress the patentability of applicants' claims over these references.

The Examiner has also rejected claims 12, 13, 16, 17 and 20-25 under Section 102(b) and Section 103(a) as unpatentable over Janda. The indicated amendment of claim 12 to include the feature of claim 14 moots this rejection. However, it is further

noted that Janda does not in any sense disclose or suggest the applicants' structured particulate system including a matrix forming a network as defined in claim 12.

With respect to the rejection of claims 12 and 16-26 as anticipated by Kelly 5,922,392, the indicated amendment of claim 12 also moots this rejection. However, here again, it is noted that Kelly is concerned with a fiber matrix and does not disclose the applicants' network structure.

Kelly likewise does not suggest the features of applicants' claims 27-28, particularly in the context of claim 12 or 13. Accordingly, the rejections based on Kelly should be withdrawn.

The same is true for the Section 102(b) rejection of claims 12, 16, 17 and 20-22 on Steinke; the Section 102(b) rejection of claim 12 on the Sharma patents and the feature of 102(b) rejection of claims 12, 16, 17, 20, 21 and 22 as anticipated by Fuisz. These references do not in any way disclose the applicants' invention as defined by amended claim 12 from which all the other claims depend, directly or indirectly. For example, according to Steinke, the products have a particle size of 100 to 500 micron. The applicants' products have a mean weight diameter of 25 to 1500 microns. These two parameters are incomparable. The applicants' mean weight diameter is defined on page 5, lines 6-8 of the present specification and, as there noted, it is the outcome of the sum of all multiplications of weight fractions on a screen and screen openings. Particle size as in Steinke is just the outcome of a sieving operation.

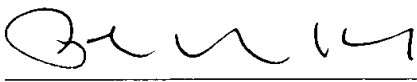
Basically the distinctions noted above with respect to Steinke are equally applicable to the Sharma and Fuisz disclosures referred to by the Examiner.

In summary, the applicants' claims, particularly as amended herein, are thought to satisfy Section 112 requirements and define subject matter which is new and unobvious over the prior art. Accordingly, favorable reconsideration of this application with entry of this amendment and allowance are requested.

The claim changes are highlighted in the attached Appendix.

Respectfully submitted,

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APPENDIX
Version with Markings to Show Changes Made

IN THE CLAIMS

Claims 14 and 23 are being canceled without prejudice.

The claims are amended as follows:

12. (Amended) A structured particulate system comprising at least one nutritionally active, organic solid component incorporated in a matrix which forms a network completely incorporating said nutritionally active, organic solid component in a weight ratio of 1:99 of said solid component to 99:1 of said matrix, the mean weight diameter of the particles of said structured system ranging from 25 to 1500 microns and the system displaying a loose bulk density of 0.1 to 1.1 Kg/l.

13. (Amended) The structured particulate system of claim 12 wherein the nutritionally active, organic solid component is selected from the group consisting of oleanoic acid, ursolic acid, folic acid, policosanol and phytosterols.

15. (Amended) The structured particulate system of claim [14] 12 wherein the system displays a loose bulk density of 0.3 to 0.6 Kg/l.

20. (Amended) The structured particulate system of claim 12 or 13 wherein the nutritionally active, organic solid component has a discrete particle size within the total structured particulate system of 2 to 275 microns.

21. (Amended) The structured particulate system of claim 12 or 13 wherein the nutritionally active, organic solid component has a discrete particle size within the total structured particulate system of 5 to 250 microns.

22. (Amended) The structured particulate system of claim 12 or 13 wherein the nutritionally active, organic solid component has a discrete particle size within the total structured particulate system of 7 to 200 microns.

24. (Amended) The structured particulate system of claim [23] 12 wherein the nutritionally active component is a component that improves the oral properties of a food product, or the dispersability of the active component in a food.

26. (Amended) Method for improving at least one property selected from the oral properties of a food product and the homogeneity of an organic solid nutritionally active component in a food product, which comprises incorporating in the food product an effective amount of the structured particulate system of claim 12 or 13.

27. (Amended) Method for improving at least one property selected from the oral properties of a food product and the homogeneity of an organic solid nutritionally active component in a food product, which comprises incorporating in the food product from 0.01 to 50 wt %, based on the food product of the structured particulate system of claim 12 or 13.

28. (Amended) Method for improving at least one property selected from the oral properties of a food product and the homogeneity of an organic solid nutritionally active component in a food product, which comprises incorporating in the food product from 1 to 30 wt %, based on the food product of the structured particulate system of claim 12 or 13.

30. (Amended) Process for preparing a structured particulate system as defined in claim 12 or 13 which comprises:

- (i) mixing a solid organic nutritionally active component with a matrix into a homogeneous powder;
- (ii) adding a solvent to part of the powder obtained to dissolve the matrix resulting in a suspension of the active component in solvent;
- (iii) suspending part of the powder resulting from step (i) in an expansion chamber of a fluid bed; and

- (iv) spraying the suspension resulting from (ii) onto the suspended powder of step (iii) in the expansion chamber and drying rapidly by a heating medium.